Supreme Court, U.S.
FILED

No. 98 446 SEP 11 1998

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

FRANK B. CARABELLO, Petitioner

V.

SUPREME COURT OF KENTUCKY, ET AL. Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS, SIXTH
CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

i. Where a judge—by unlawful, conspiratorial use of powers during a civil litigation—inflicts irreparable harm, is the judge or a non-state conspirator civilly liable to the injured party; that is, does judicial role, jurisdiction or immunity lie—to shield all conspirators for perverse use of judicial powers, to irreparably deprive a party's rights, or to work fraud and injury.

ii. Whether institutional integrity or the public good is impaired by immunity to civil liability for malicious misuse of judicial powers.

iii. Whether immunity doctrine, as applied below, promotes institutional corruption, uncompensated injury, conspiracy for illegal acts or malicious will over rule of law.

iv. Whether 42 U.S.C. §§1983, 1985, 1986 are drained of their meaning, where unlawful judicial acts are held to be not liable thereunder.

v. Whether 18 U.S.C. §242 is insufficient to deter institutional corruption, leaving the public defenseless and without sufficient redress for malicious and unlawful judicial acts.

vi. Whether Fed. R. Civ. P. 12(b)(6) dismissal lies for non-state persons—allegedly, conspiring with jurists for fraud and override of law—if the non-state persons had knowledge, and could prevent injury but failed to.

vii. Whether Fed. R. Civ. P. 12(b)(6) dismissal of civil claims on the reasoning applied below is a conclusive presumption, that unlawfully shields state and non-state conspiracy, violates due process or expands injustice.

LIST OF PARTIES

The case caption is carried forward from the United States Court of Appeals, Sixth Circuit and originally was assigned by district court.

Petitioner, Frank B. Carabello, is a party, a citizen of the United States and a resident of Pennsylvania. Prior to 1995, the petitioner was a resident of Kentucky.

There are no other parties to the proceedings in this Court, because none were involved in the judgment—of the United States Court of Appeals, Sixth Circuit—sought to be reviewed herein.

All other individuals/entities were dismissed—by judgment below—at the pleading stage, prior to any service of process.

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I. OPINIONS BELOW

The opinion of the United States Court of Appeals, Sixth Circuit sought to be reviewed herein is the unpublished order entered in Case Number 97-5963 on June 23, 1998 (reprinted in Appendix 1); rehearing denied on July 28, 1998 (as reprinted in Appendix 2). The denied petition for rehearing is reprinted in Appendix 3. The opinion—sought for review—affirmed Eastern District Kentucky, Frankfort Division, U. S. District Court order of July 7, 1997, which is an unreported, sua sponte, dismissal under Fed. R. Civ. P. 12(b)(6).

II. STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

III. UNITED STATES CONSTITUTIONAL PROVISIONS, RULES AND STATUTES INVOLVED

The Fifth Constitutional Amendment states in the pertinent part:

> [nor shall any person] "be deprived of life, liberty, or property, without due process of law;"

The Seventh Constitutional Amendment states in the pertinent part:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,"

The Fourteenth Constitutional Amendment states in the pertinent part:

> 1. "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fed. R. Civ. P. 38(a) states:

> "The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."

42 U.S.C. § 1983 states in the pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or caused to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or proper proceeding for redress."

42 U.S.C. § 1985 states in the pertinent parts:

> *(2) Obstructing justice*—"if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;"
>
> (3) *Depriving persons of rights*—"in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a Citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

IV. STATEMENT OF THE CASE

This case involves questions of immunity, institutional corruption and override of rule of law. Persons situated similarly to petitioner are those subject to injury from wrongs set forth in 42 U.S.C. §§1983, 1985, 1986. The opinion below dismissed liability for malicious judicial acts (hereafter "[mja]") and redress for injuries—accruing from a conspiracy in Kentucky (hereafter "KY"). The conspiracy empowered acts done on June 11, 1994, which are set forth in the KY petition reprinted in Appendix 4. Petitioner's livelihood, property and federal rights were deprive over the years that followed, solely, because—with respect to his original claims (App. 4)—equal protection of the law was willfully obstructed and secured rights were maliciously defeated. Only the KY trial court (hereafter "KYCC") held the power capable of so obstructing justice and depriving rights between 1994 and 1996. Injury accrued continuously after June 11, 1994.

In July of 1996, KYCC executed the orders reprinted in Appendix 5-6, which show a conspiracy—to commit fraud and to defeat due process and equal protection of the law—under color of law. The petitioner appealed to the KY Court of Appeals (hereafter "KYCA") and Supreme Court (hereafter "KYSC"). Those KY courts overrode right of appeal and refused to correct KYCC malfeasance and manifest injustice. (See KY orders reprinted in Appendix 7-9.)

The petitioner claimed—in United States District Court, Eastern District of Kentucky, Frankfort Division (hereafter "USDC-EKYF")—that thirteen private individuals and entities and nineteen jurists of three KY courts caused or knew of and had the power to prevent his damages. The USDC-EKYF dismissed—prior to service of process—for failure to state a claim (upon which relief could be granted). The dismissal, in essence, was on the following three grounds:

(i) that judicial immunity overrides entitlement to relief; that injury—from acts and refusals of state judges to do justice—can never be remedied under 42 U.S.C. §§ 1983, 1985, because judicial immunity prevents liability no matter how malicious, conspiratorial or unconstitutional the acts and refusals may be;

(ii) that 42 U.S.C. § 1985 requires something more than malicious conspiring to obstruct or defeat the equal protection of the law; and

(iii) that a pleading to entertain pendent jurisdiction is discretionary (and denied).

The United States Court of Appeals, Sixth Circuit (hereafter "USCA-6th"), in denying rehearing (App. 2), stated "this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order". The order (App. 1) affirming dismissal concluded "Carabello was unhappy with the property division in a divorce proceeding and the denial of his attempt to receive mandamus relief within the Kentucky court system". The original KY jurisdiction was for a divorce division. But, the grievance was that petitioner received severe injury in lieu of division; that the injury was by a conspiracy for wrongs set forth in 42 U.S.C. §§1983, 1985. The alleged illegal use of jurisdiction or powers was to cause injury, refuse liquidation of the injury claim, and obstruct right of appeal (App. 8). The USCA-6th disregarded that:

(i) the allegations were of KY jurists that deprived equal protection of law and overrode the will of the law, by orders, acts and refusals—that were exercised for no legitimate legal purpose;

(ii) the allegations were of wrongful, non-final and non-appealable override of law, which has caused injury to accrue continuously since 1994;

(iii) the allegations were of damages to reputation and business, and deprived livelihood, property, rights and court access to claims, at all KY court levels, such that no sufficient state court remedy was any longer available;

(iv) the allegations were of conspiracy between jurists and non-state individuals to use non-appealable orders for fraud and injury, including for malicious prosecution against plaintiff and his daughters on false pretenses in foreign states; and

(v) the allegations were of conspiracy to shield malicious acts and refuse timely court access to claims, under color of state judicial authority.

The complaint of these matters was filed in USDC-EKYF pursuant to jurisdiction of 28 U.S.C. §§ 1331, 1332, 1343, 1367, and annexed six KY orders to show unlawful, unconstitutional treatment by the KY court system. The complaint was filed June 18, 1997, within the two year limit for 42 U.S.C. § 1983 claims. It was of property fraud and damages to livelihood. It included deprivation of petitioner's rights to his company (hereafter "Keyline") and obstruction of his federal rights, under color of law. The damages—from lost income—accrued continuously, from 1994, at an annual rate of $125,000.00, and further injury has accrued since the filing of the complaint—which sought compensation for a $1,500,000.00 injury. Institutional corruption in the KY court system is plain from the facts, that were presented to the courts below.

KYCC, KYCA, KYSC, USDC-EKYF, USCA-6th—all denied claims, without the jury trial demanded in the trial courts and without oral hearing in any court. A review by this Court—of the matters presented to the courts below—is necessary to enforce the rule of law.

V. REASONS FOR GRANTING THE WRIT

Petitioner was before KYCC on equity claims, when former wife caused suspension of Keyline sales on wrongful acts done June 11, 1994. KYCC obstructed Keyline injury claims while fraudulently forcing conveyance of property (including to a car dealer client of the KYCC domestics commissioner). This expanded injury, inter alia, by 1996 orders, which were unlawful by design. The design included use of pleadings on Keyline to obstruct right of appeal—on fraudulent conveyance of property to conspirators. The KY conspirators worked an unlawful, corruption of institutional purpose.

Under the opinion below, people suffering [mja] are denied court access and fair compensation—no matter how severe their injury. That judges are immune for willful disobedience to oath of office was affirmed by the USCA-6th. The basis was stated on Page 5 of the USDC-EKYF opinion, as follows.

"In Barnes v. Winchell, 105 F.3d 1111 (6th Cir. 1997), the Court said of absolute judicial immunity:

> it is a well-entrenched principle in our system of jurisprudence that judges are generally absolutely immune from civil suits for money damages. Mireles v. Waco, 502 U.S. 9, 9 (1991); Forrester v. White, 484 U.S. 219 (1988); Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1967); Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872). Immunity from a § 1983 suit for money damages is no exception. See Pierson, 386 U.S. at 554. The doctrine of judicial immunity is justified 'by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability.' Antoine, 508 U.S. at 435.... In fact, the Supreme Court explicitly stated that '[a) judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess

of his authority,' nor 'if his exercise of authority is flawed by the commission of grave procedural errors.' Stump, 435 U.S. at 356, 359.

Absolute judicial immunity is overcome only in two situations:

First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

Mireles, 502 U.S. at 11-12 (internal citations omitted); see also Mann v. Conlin, 22 F.3d 100, 103 (6th Cir.) (same), cert. denied, 115 S.Ct. 193 (1994).

Id. at 1115-16."

Under Bradley v. Fisher, (1872) 80 U.S. (13 Wall.) 335 at 352, immunity doctrine was limited to acts within jurisdiction. In Jacobson v. Schaefer, (7th Cir. 1971) 441 F 2d 127 at 129, the Court quoted:

"the doctrine would not apply to the commission of a 'clearly illegal act' on the part of a judge. Luttrell v. Douglas, 220 F. Supp. 278 (1963)."

The USCA-6th disagrees and immunizes obstructing justice and conspiracy to work injury and fraud. Chief Justice Marshall held such judicial "will" is outside jurisdiction, as follows:

"Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words the will of the law." Osborn v. Bank of the United States, et al., 9 Weat (22 U.S.) 738, 866, 6 L. Ed. 204 (1824).

The Court below disregarded definitions of duty, and limits to authority, role or jurisdiction, and disregarded the illegal deprivation of equal protection complained of. The KY courts refused to protect Keyline, conveyed property contrary to law, and obstructed justice. This is an unlawful, oppressive rule of men, never intended by the legislature. After enduring this ordeal, petitioner is entitled to redress in federal court (42 U.S.C. §§1983, 1985). The state judges and/or non-state conspirators are liable for his irreparable economic loss; especially, since appeal and all state remedies were exhausted and denied (App. 5-9), before filing federal claims. The first question challenges the USCA-6th opinion. The next two present a causal relationship between the (USCA-6th view of the) judicial immunity doctrine and institutional corruption. The USCA-6th view puts individual state judges above the law and duty to sworn oath of office.

The application of [mja]-immunity (as set forth by the courts below) ought to be rejected—like a scientific hypothesis proven false. It invites disobedience and institutional corruption. It is a privilege to override duty. Such a privilege must impair justice and corrupt institutional purpose, by removing accountability. Such a privilege disregards duty to the rights of others and conflicts with the following settled principle of common law.

> "every right, when withheld, must have a remedy and every injury its proper redress." (Blackstone Commentaries, 1769.)

This principle is fundamental to justice. Institutional corruption of lawful process is insidious. It evolves from unfettered breach of duty and accrual of personal and political gain (Dennis F. Thompson, Ethics (Brookings, 1995), 33). The petitioner contends that the KY orders, acts and refusals complained of can not be explained, except by such corruption. No fair-minded judge would engage in such activity. It revokes federally secured rights and inflicts unlawful injury, which a judge ought never be privileged to do.

The common law immunity doctrine may aid the institution, duty and role of government, But, it ought not override constitutional rights to property and livelihood. Albeit, by prior determination, immunity bars redress for an unconstitutional conviction (Pierson v. Ray, (1967) 386 U.S. 547, 87 S Ct 1213, 18 L Ed 2d 288), such conviction can be overcome by petition for habeas corpus. There is no such remedy for the wrongs involved in this case. Consideration of the exceptions to the judicial immunity doctrine is necessary and is the right course.

The doctrine ought to be consistent with that applied to the executive branch of government. The criteria for immunity of a state governor was established in Scheuer v Rhodes, (1974) 416 US 232, 94 S Ct 1683, 40 L Ed 2d 90. The Court held that the executive branch has no absolute immunity for 42 U.S.C. § 1983 wrongs.

If judges are immune to 42 U.S.C. §§ 1983, 1985 wrongs—despite injury from unlawful acts, then Scheuer holds to a double standard; whereby, state governors are held to the supreme law of the land, and state judges are not. In Scheuer 40 L Ed 2d at 103, it was said of state governors, that:

> "Under the criteria developed by precedents of this Court, § 1983 would be drained of meaning were we to hold that the acts of a governor or other high executive officer have 'the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government.' Sterling v Constantin, 287 US at 397, 77 L Ed 375, 53 S Ct 190. In Sterling, Mr. Chief Justice Hughes put it in these terms:
>
> > 'If this extreme position could be deemed to be well taken, it is manifest that the flat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land;' "

The allegations presented are similar to those in Scheuer; but the malicious will for injury may be more evident in the instant case. The KY jurists had the facts of injury directly put to them, repeatedly, over a period of years. It is clear (in the instant case), that the KY judiciary intended injury. Albeit the claims include state judges, non-state conspirators and damages to property and reputation, instead of the executive branch wrongs alleged in Scheuer, the relevant difference is the application of the immunity doctrine. Comparing Scheuer with the precedents applied by the Court below, the liability for 42 U.S.C. § 1983 wrongs would include 'every person' in the executive branch but exclude 'every person' in the judicial branch. This double standard conflicts with the reasoning in Scheuer 40 L Ed 2d at 99. The Court said—of the judicial and executive branches—that:

> "Immunity for . . . branches—long a creature of the common law—remained committed to the common law. See, e.g., Spalding v Villas, 161 US 483, 498-499, 16 S Ct 631 (1896)."

Regardless of the branch of government, Scheuer suggests that the determining factor for immunity is a state official's role or duty. In Osborn, supra, judicial role is defined and limited to duty to discern the will of the law. This should mean that immunity lies only for judges intending to work the will of the law. Judges ought to be liable for obstructing justice and irreparable injury.

The public can never rely on a judicial system that is held harmless for such wrongs. The petitioner experienced a lawless, untouchable attitude among the state judges, lawyers and others involved in KY. Immunity for their lawlessness promotes abuse of the public. The abuse of petitioner by so many in the KY system is testimony to the perversion in that system. The public suffers from such corruption and disregard of duty.

Under the opinion of the courts below, a judge is forgiven in advance for all malicious action taken (to wit, has

immunity). Such a privilege is a "license" for corruption. Petitioner's injury epitomizes the harm of such immunity—which is to promote injustice and utter disregard of duty. The privilege promotes institutional corruption more than it deters injustice. Judges are the model of fairness for all others in society. Their privilege should never license unlawful injury or obstructing justice. Such license is no more in the public interest than allowing physicians to harvest body parts in utter disregard of duty to heal.

The judgment vital to the judiciary is not impaired by liability. Part of the justification (for immunity) is that some judges may not act, unless they are immune to civil liability. But, a license for unlawful acts is the substance of malicious bullies. Only such bullies need [mja]-immunity. Honorable judges have no need for it. Civil rules make it unnecessary, because, even without [mja]-immunity, entitlement to relief or standing is under judicial control per current rules. The court below showed this, by dismissing petitioner's claims, even though the KY courts acted in utter perversion of authority, role or jurisdiction. Clearly, the civil rules are powerful; in the event that some [mja] were excepted from immunity, judicial independence and impartial judgment would not be in any jeopardy. No [mja]—currently immune to civil suit—ought to be immune, where injury is substantial and redress is otherwise lacking.

The fourth question asks if 42 U.S.C. §§1983, 1985, 1986 are drained of meaning, if unlawful judicial acts are not liable thereunder. KY jurisdiction was for property division. Equity division law provides no jurisdiction or authority for the Keyline destruction, the loss of livelihood, $1,500,000.00 in damages, deprived federal rights, or a defeat of rule of law. The KY acts and refusals clearly were illegal. The USCA-6th over-applied the immunity privilege, if willful disobedience of oath of office and malicious disregard of the law have any meaning. Liability (of conspirators) for injury should not be dismissed, at the pleading stage. There is just cause to review the opinion of the USCA-6th.

The fifth question is presented to suggest that 18 U.S.C. §242 carries insufficient deterrent. This was acknowledged in Littleton v. Berbling (7th Cir. 1972) 468 F 2d 389 at 413 (quoting Breitel), as follows:

> " 'Such remedies are merely nominal. The criminal sanctions can rarely be invoked to control the errant police officer, the errant prosecutor, and never the oppressive judge.' Breitel, Controls in Criminal Law Enforcement, 27 U.Chi.L.Rev. 427, 434 (1960)".

In part, criminal sanctions are no deterrent, because the selection of [mja]-cases is not under the control of an injured person. The public can only directly access 42 U.S.C. §§1983, 1985 civil redress. Injurious [mja] are an obstructing of the equal protection of the law. Immunity to 42 U.S.C. §§1983, 1985 liability for such acts is adverse to vested rights and to the judicial system. Such immunity does not serve the public need for a lawful society.

The last two questions presented, also, are of public importance. The sixth concerns a settled issue, yet one disregarded by the courts below, which held that a 42 U.S.C. § 1985 conspiracy requires more than the matter complained of. But, the requisite elements of 42 U.S.C. § 1985 (to wit, malicious conspiring to obstruct or defeat the equal protection of the law) manifestly were pled and evidenced.

The complaint exhibited six KY court orders, including two identified therein as "Ex B and Ex C" (shown in App. 5-6, respectively). The following quote from the complaint shows the requisite elements of a 42 U.S.C. § 1985 conspiracy were pled on page 5 (and elsewhere).

> "Plaintiff was sole owner of a company (hereafter Keyline) he founded in KY in 1981. Keyline was his livelihood and forced to terminate in 1995, per acts committed against Plaintiff under color of KY law, and per orders, rulings and acts that were substantially contributed

to and caused by unconstitutional use of powers of KY Boone County Circuit Court. This complaint arises from use of KY judicial powers for non-judicial personal oppressive purposes, conspiracy and the destruction of Keyline and Plaintiff's lifetime career efforts. Orders of July 12 and July 23, 1996 (see copies hereto annexed as Exhibits Ex B and Ex C) are unconstitutional on the face of these orders (also see paragraphs 45, 46 and 48, infra). Paragraphs 2 - 3 of Ex B divide equity and execution thereon (per Ex C) nullifies the reason to litigate the open jury issues remanded in Ex B, paragraph 1. This oppressive separation of issues was malice solely to deprive jury rights . . . . Clearly, these orders were made with malice, serve no judicial purpose, and divest federal rights."

The claims against non-state persons included fraudulent conveyance to former wife, under color of KY court orders (App. 5-6) consented to by the lawyers signing thereon. The three non-state conspirators, identified therein, thereby committed fraud under color of law. Others were similarly involved at other stages. This raises a serious question as to the USCA-6th decision—to dismiss the thirteen non-state conspirators complained of. The decision disregards the allegations and the applicable law.

The seventh question suggests the USCA-6th holds a conclusive presumption—of no entitlement to relief—where claims are of state judiciary acting with non-state conspirators. Petitioner contends this must deprive due process, irrespective of the injury, fraud and non-state conspiracy worked against a person.

This presumption is evident in the de novo and rehearing reviews of the USCA-6th. The rehearing petition (App. 4) suggests that the Court disregarded applicable case law, including the following:

(i) Immunity does not extend to persons who conspire with state official to violate the civil rights of another. See Dennie v Sparks (1980) 449 US 24, 28-29, 101 S Ct 183, 186-187, 66 L Ed 2d 185.

(ii) The test for dismissal is whether the claimant is entitled to offer evidence in support of claims. In applying this test, the allegations should be construed favorably to the pleader. See Scheuer v. Rhodes, (1974) 416 U.S. 232, 236, 94 S Ct 1683, 40 L Ed 2d 90, 96.

(iii) To make a determination for dismissal at the pleading stage, the sole criteria is whether a claim is meritorious. It is immaterial if the requested relief is inappropriate. See Holt Civic Club v. City of Tuscaloosa, (1978) 439 U.S. 60, 99 S Ct 383, 58 L Ed 2d 292; Floyd v Trice (CA8th, 1974) 490 F 2d 1154.

(iv) A fraudulent scheme and conspiracy may be and usually is established by circumstantial evidence, i.e., by inferences from the evidence of the relationship of the parties and by overt acts, conduct and other probative circumstances. See United States v Conzemius (1978) 586 F 2d 97.

(v) Judicial immunity does not automatically prevent equitable relief, on orders that work ongoing wrongful injury. See Littleton v. Berbling (7th Cir. 1972) 468 F 2d 389 at 406; Bramlett v. Peterson (DC Fla. 1969) 307 F Supp. 1311.

The disregard of these precedents is another reason for granting writ of certiorari in this case. Claims were improperly dismissed. This apparently was the consequence of the aforementioned conclusive presumption. The petitioner has standing for claims against the non-state entities and individuals complained of. Petitioner should not be deprived redress against at least some of these. This would deprive Fifth and Seventh Amendment rights and deny law set forth under 42 U.S.C. §§1983, 1985.

There is no immunity to liability for the non-state individuals who received financial gains on misrepresentation and conspiratorial acts designed to deprive rights. As they knew of the deprivation, they are liable under 42 U.S.C. §§ 1985, 1986—providing for redress against a non-judicial person on damages accruing from deprivation, if "such person by reasonable diligence could have prevented" the damages.

The non-state actors complained of had ability to prevent petitioner's injury and willed not to. The former spouse had many opportunities—including not collecting (App. 6) or concealing property, not harming petitioner's reputation, and not causing Keyline sales to end. The lawyers who agreed to and signed the order (App. 5) that obstructed KY appeal, also, could have prevented damages. Instead, the petitioner's attorneys, by signature, consented to injustice and conspiracy. Such disregard of duty and the law is fraud, under color of law. The USCA-6th dismissal (App. 1) was on a presumption—of no entitlement to relief.

Also, the presumption promotes continuation of injustice. After years of obstruction, injustice may continue, for example, by former spouse's bankruptcy discharge of July 22, 1998 (obtained on petition filed on March 20, 1998). Although her debts are excepted by the bankruptcy code, the law may be defeated, unless there is access to a review of the personal injury—arising directly from unlawful state court determinations (that violate federal rights). Bankruptcy court does not have jurisdiction for such a review. Only this Court has such jurisdiction (Allah v. Superior Court of State of Cal., Los Angeles Co., (CA9th Cir. 1989) 871 F 2d 887). This Court should review the matter for the bankruptcy court. On December 15, 1997, such a review of the unlawful state court determinations was denied by this Court (in Case No. 97-671); and rehearing was denied 1-26-98. This combined with the dismissal below has made granting writ of certiorari in this case absolutely necessary to stop a continuation of gross injustice.

The case below arose, because KY courts passed on duty, denied appeal and left injury from state [mja] in full force and effect. The Courts below abused discretion by dismissing all unconstitutional acts complained of and by denying rehearing. The discretionary acts of the Courts below are subject to review and reversal. (See Littleton v. Berbling (7th Cir. 1972) 468 F 2d 389 at 412.)

The USCA-6th cited only one case (App. 1); one that had nothing to do with the issues. It did not enforce the liberal construction due, at the pleadings stage. The Court was so committed to judicial immunity, that it disregarded the applicable law. The Court's construction deprives rights—to due process (guaranteed by the Fifth Amendment) and to a jury determination of the facts (guaranteed by the Seventh Amendment and Fed. R. Civ. P. 38(a)). Vital vested rights are overridden by current USCA-6th interpretation of judicial immunity doctrine. The issues presented concern exceptions to and consequences of the doctrine. These ought to be examined for the public good. In today's litigious society, numerous people rely on state courts. Holding every unlawful act of a judge—committed during civil litigation—immune to civil prosecution can never serve the public good.

This is the right case and time to bring judicial powers and privileges in line with the will of the law. The underlying issue is—whether injury from [mja] is unlawful and subject to civil redress, or if not, whether it should be. If currently subject to civil redress, then the USCA-6th misapprehended. If not, there is no effective federal protection of rights—as injury may be inflicted by a malicious judge at will (by exercising non-appealable orders). This is a corruptive influence of [mja]-immunity, that should be considered. The decision to grant writ of certiorari in this case should turn on the intent and the actual consequences of immunity, as well as on the facts and law set forth in this petition.

VI. CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that his petition for a writ of certiorari will be granted.

This petition respectfully submitted the 9th day of September, 1998, By:

Frank B. Carabello

FRANK B. CARABELLO, PRO SE
2855 WILSON SCHOOL COURT
SINKING SPRING, PA 19608
(610) 670-5662

CERTIFICATION

I, Frank B. Carabello, hereby certify that the foregoing PETITION is restricted to grounds specified in Rule 10 of this Court, that the petition is presented in good faith, that there are no persons or entities required to be served; and I declare under penalty of perjury that all statements set forth in this petition are true and correct as I verily believe.

Frank B. Carabello

FRANK B. CARABELLO

APPENDICES TO PETITION FOR CERTIORARI

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

No. 97-5963

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK B. CARABELLO,	)	
Plaintiff-Appellant,	)	FILED
V.	)	JUN 23 1998
	)	LEONARD
SUPREME COURT OF KENTUCKY, et al.,	)	GREEN, Clerk
	)	
Defendants-Appellees.	)	ORDER

Before: MERRITT, BOGGS. and SUHRHEINRICH, Circuit Judges.

Frank B. Carabello, a Pennsylvania resident, moves to enjoin state court proceedings and appeals pro se a district court order dismissing a complaint he filed under 42 U.S.C. §§ 1983 and 1985 asserting civil fights violations and also raising state law claims. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Carabello filed this action against the Supreme Court of Kentucky, the Court of Appeals, the Circuit Court, and all of the judges of said courts, two commissioners of domestic relations, a number of lawyers, his ex-wife, a car dealership, and a financial institution. The type written thirty-seven-page complaint was

remarkably devoid of any factual allegations. As best can be inferred, Carabello was unhappy with the property division in a divorce proceeding and the denial of his attempt to receive mandamus relief within the Kentucky court system. He alleged in conclusory terms that the named defendants had conspired to discriminate against him on the basis of his economic class. The district court dismissed the complaint, and this appeal followed.

Upon de novo review, we conclude that this complaint was properly dismissed for failure to state a claim for the reasons stated by the district court, as Carabello could prove no set of facts that would entitle him to the relief requested. *See Sistrunk v. City of Strongsville*, 99 F. 3d 194, 197 (6th Cir. 1996), *cert. denied*, 117 S. Ct. 2409 (1997).

Accordingly, the motion to enjoin state court proceedings is denied and the district court's order dismissing this complaint is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Clerk

No. 97-5963

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK B. CARABELLO,	)
Plaintiff-Appellant,	)FILED
V.	)JUL 28 1998
	)LEONARD
SUPREME COURT OF KENTUCKY, et al.,	)GREEN, Clerk
	)
Defendants-Appellees.	) ORDER

Before: MERRITT, BOGGS. and SUHRHEINRICH, Circuit Judges.

Frank B. Carabello has filed a petition for rehearing of this court's order of June 23, 1998, affirming the district court's dismissal of his civil rights complaint.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is therefore denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Clerk

FILED
JUL -6 1998
LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

: CASE NO. 97-5963

FRANK B. CARABELLO	: Appeal From:
Plaintiff-Appellant	: U. S. District Court,
V.	: Eastern Dist. of Ky,
	: Frankfort Division
SUPREME COURT OF KENTUCKY, et al.	: Civil No. 97-53
	: Hon. Joseph M.
Defendants-Appellees	Hood, Judge

QUESTIONS PRESENTED FOR REHEARING

WHETHER THE ORDERED DISMISSAL OF THIS CASE ON JUNE 23, 1998 OVERLOOKS, MISAPPREHENDS AND/OR MISCONSTRUES ALLEGATIONS AND LAW, AND THEREBY, ERRS IN THE DETERMINATION REQUIRED FOR A FED. R. CIV. P. 12(b)(6) DISMISSAL.

WHETHER DISMISSAL UNDER FED. R. CIV. P. 12(b)(6) IS JUSTIFIED—WHERE THE ALLEGATIONS, IN ESSENCE, ARE—(a.) THAT WILLFUL ACTION AND INACTION BY STATE JUDICIARY WAS PROXIMATE CAUSE OF $1,500,000.00 DAMAGES TO CLAIMANT; (b.) THAT OTHER WILLFUL ACTION AND INACTION WAS A COVER UP OF THE DAMAGES; (c.) THAT SAID CAUSE AND COVER UP WERE EFFECTED BY MEANS OF WILLFUL, WANTON AND RECKLESSLY INDIFFERENT OVERREACHING OF THE LAWFUL USE OF JUDICIAL POWERS, EXPRESSLY TO DEFEAT RULE OF LAW; AND (d.) THAT SAID MEANS INVOLVED COLOR OF LAW, CONSPIRACY, DEPRIVATION OF VESTED FEDERAL RIGHTS, JUDICIAL ORDERS, WILLFUL INACTION ON THE PART OF NON-STATE AND STATE CONSPIRATORS, AND INTENTIONAL AND IRREVERSIBLE DEPRIVATION OF TIMELY ACCESS TO STATE COURT.

WHETHER THE ALLEGATIONS IN THIS CASE WERE SO UNSUPPORTED BY THE EXHIBITS INCORPORATED INTO THE COMPLAINT, AND SO TRIVIAL AND SO SETTLED UNDER FEDERAL CIVIL LAW, THAT THERE IS MANIFESTLY NO SUBSTANTIAL PUBLIC INTEREST IN THE DETERMINATION OR DISMISSAL OF THIS CASE.

INTRODUCTION

Appellant, Frank B. Carabello, hereby argues the aforesaid questions, jointly, as grounds for rehearing, to show that the dismissal order—entered in this case on June 23, 1998—(appended hereto and hereafter "*THE ORDER*") is contrary to law.

PROCEDURAL HISTORY

1. The complaint (hereafter "*THE COMPLAINT*") was dismissed pursuant to Fed. R. Civ. P. 12(b)(6), by sua sponte order of the district court at the pleading stage, before issuance of summons. No opportunity to amend *THE COMPLAINT* was provided pursuant to Fed. R. Civ. P. 15(a), to wit, the order of the district court issued as a final judgment. This petition is pursuant to FRAP 40, *THE ORDER* and the error involved in the dismissal of *THE COMPLAINT*.

SUMMARY OF CLAIMS DISMISSED

2. *THE COMPLAINT*, fairly read, alleges damages of $1,500,000.00 caused by federal rights deprived, to wit, deprivation of due process and equal protection of the law.

3. Allegedly, the deprivation was a conspiracy, involving Kentucky judges, lawyers, and other individuals, to cause and/or cover up destruction of a company (hereafter "Keyline").

4. Allegedly Keyline was destroyed in 1994 by state and non-state conspirators, who schemed to cover up the damage (to Keyline) by refusing access to court. The damage was never determined, because of Kentucky court orders, referred to in *THE COMPLAINT* and hereafter as Exhibits "ExA; ExB; ExC; ExD; ExE; ExF". (*See Copies of these documents filed in this case on August 27, 1997.*)

5. Allegedly, the principle wrongdoing was to close off the Kentucky court access—of an injured party, to wit, the Appellant in this case. By repeatedly refusing access, the aforesaid exhibits (i.e., Kentucky orders) exercised damages,

injustice, and made state relief—by appeal or otherwise—unfeasible.

STATEMENT OF ERROR IN GENERAL

6. The error assigned is that *THE ORDER* disregarded wrongdoing and incorrectly determined the cause of action and merits of *THE COMPLAINT*.

7. The exhibits incorporated into *THE COMPLAINT* show judiciary closed off state court access. The allegation that it was repeatedly, willfully and maliciously closed off from May 1994—breach of duty to enforce a contract—forward, and expressly to defeat claims and cover up wrongdoing, should justify the taking of evidence.

8. Dismissal at the pleading stage would disregard the standard of liberal construction due at that stage. *See Scheuer v. Rhodes*, (1974) 94 S. Ct. 1683, 40 L. Ed. 2d 90 at 96, 416 U.S. 232 at 236.

9. To make a determination for dismissal at the pleading stage, the sole criteria is whether a claim is meritorious. It is immaterial if the requested relief is inappropriate. *See Holt Civic Club v. City of Tuscaloosa*, (1978) 99 S. Ct. 383, 58 L. Ed. 2d 292, 439 U.S. 60; *Floyd v Trice* (CA8th, 1974) 490 F.2d 1154.

10. The case involves an issue of public interest, specifically, whether it is outside judicial role—or, at least, a gross abuse of lawful powers—to close a state court to the pleadings of one party and selectively open it to the claims of another. This should justify a published opinion in this case.

ARGUMENT AS TO ERRORS OF FACT AND LAW

11. *THE ORDER* concluded that Carabello could prove no set of facts that would entitle the relief sought, for the reasons stated by the district court. The relief sought is immaterial. (*See paragraph 9, supra.*) Moreover, the remainder of the conclusion comes from the following mis-statement of the facts alleged.

12. *THE ORDER* misstated that "Carabello was unhappy with the property division in a divorce proceeding and the denial of his attempt to receive mandamus relief within the Kentucky court system". No statement could be less representative of the facts alleged.

13. The conclusion—"Carabello was unhappy"—disregards that the reason was the Kentucky courts would not open to timely resolve his damage claim. This was shown to be credible by writings exhibited and complained of. The Appellant contends that a jury would find the allegations credible from the aforesaid writings.

14. The test for dismissal is whether the claimant is entitled to offer evidence in support of claims. In applying this test, the allegations should be construed favorably to the pleader. (*See Scheuer v. Rhodes, supra.*)

15. Allegedly the unliquidated damages to Keyline were willfully caused by state judge(s) overreaching powers and purpose of judicial role.

16. *THE COMPLAINT* alleges state and non-state actors conspired and proximately caused injury, under color of state law. The alleged overreaching of judicial powers and conspiratorial schemes constitute merit, which *THE ORDER* clearly disregarded. It, therefore, did not reach the high standard set for a Fed. R. Civ. P. 12(b.)(6) dismissal.

17. *THE COMPLAINT* also shows additional merit. The Kentucky orders speak for themselves. ExB and ExC are consistent with a conspiracy to cover up and defeat liquidation of the (Keyline) damage claim. And non-state actors signed ExB.

18. *THE ORDER* did not consider ExB or ExC, yet, these are the foundation for *THE COMPLAINT*. These Kentucky orders liquidated all claims except the damage claim. Thereby, right of court access to the damage claim was overridden.

19. It is irrefutable that the destruction of Keyline has never been determined. (*See paragraph 1 of* ExB *and the allegations summarized on page 5 of* THE COMPLAINT.)

20. ExB is signed by Appellant's former attorney, who prepared it for judicial approval after a meeting of the minds between the three who signed it. This is a substantial showing of a conspiracy between state and non-sate actors, per se.

21. *THE COMPLAINT* alleged ExB was made non-appealable by design, as part of a scheme to expand injury and deprive federal rights. ExB was followed by ExC, which deprived property without due process and equal protection of the law, and by ExD, ExE and ExF, which denied state appellate relief based on the construction in ExB.

22. Clearly, ExB and ExC were disguised as interlocutory orders, since these ended all remedy in Kentucky courts. Their effect was final in force, deprived property and barred appeal. These show no will of law. The construction defeated the law, to wit, exercised a will of judge(s) to overreach the law.

23. The judge(s) allegedly were the proximate cause of the destruction of Keyline. ExB and ExC, clearly, willfully, obstructed justice.

24. If abusive Kentucky orders and misconduct were exercised in a conspiracy scheme—under color of law—to deprive federal rights, as alleged, relief is not barred in this case. Theses allegations were well supported by exhibits. Appellant is entitled to relief and/or to offer evidence.

25. Appellant is entitled to responsive pleadings from the non-state actors alleged to conspire with judiciary. Clearly, monetary relief is available against the non-state actors. (*See page 17 of Appellant's Brief filed on August 27, 1997.*)

26. Appellant also is entitled to offer evidence against the state actors. Monetary relief against individual state actors may be entitled where judiciary willfully overreach

judicial role. Appellant also is entitled to an injunction against state judiciary, to wit, to protect him from further injury, and, if possible, recover assets released by ExC.

27. Justice requires that *THE ORDER* be reconsidered. *THE ORDER* upheld the district court, without specific comment and oral hearing. *THE ORDER* would prevent Appellant from vindicating rights and should be vacated, on grounds that entitlement to relief appears to be available.

28. Appellant can not vindicate his rights by state court action. Only federal court can determine the liability and fashion a remedy—for the obstruction of timely state court access to damage claims.

29. The Appellant has never been allowed a fact finding trial or hearing on the destruction of Keyline, in any court, since 1994. The underlying issue is whether courts are absolutely open equally to all. Kentucky judiciary have shown by their orders, the aforesaid exhibits, that they rule selectively, to wit, open court only to claims they elect to determine. In essence, this is a will to decide matters without a trial.

30. Thus, Dismissal of *THE COMPLAINT* at the pleading stage would be appalling and a miscarriage of justice. *THE ORDER* does not serve the public interest. If this case were to be dismissed without any fact finding by the jury demanded, the opinion to do so should be published with a full accounting of the facts and law. The public has a right to know specific reasons for such a dismissal. The public needs to know of law that can deprive rights—of due process and equal protection of law—and protect a state judge's willful misuse of power and overreach of judicial role. The matter involves the public trust in courts. The matter should be published, so that both the public and the legislators are fully informed. The Appellant contends a published opinion would help the public access vested rights in state civil litigation; that present case law is too vague in the matter of state judicial overreaching, such that the public does not know their rights in the matter.

31. *THE ORDER* cited an authority (*Sistruck v. City of Strongsville*, C.A. 6, 1996, 99 F.3d 194 at 197, cert. denied (1997) 117 S. Ct. 2409), which does not apply to or settle the issues raised. The Appellant seeks only the relief he is entitled to and the rights guaranteed by the supreme law of the land; nothing more and nothing less. Under a system of rule by law, every right, when withheld, must have a remedy and every injury its proper redress. (*See pages 17-18 of Appellant's Brief filed on August 27, 1997.*)

32. The Appellant contends this case merits a trial in federal district court; that there is no law on which to dismiss both the state and non-state actors in this case.

33. Having been deprived access to state court since 1994, access to federal court is proper means to enforce a system of open courts. The facts and law entitle federal access to prevent further injury and to recover damages from at least some of the conspirators. *THE ORDER* would not only prevent a fair liquidation of a substantial damage claim; it would open up the possibility of further injury. That outcome would be unreasonable and contrary to law. Substantial justice is required under the Federal Rules of Civil Procedure, Rule 8(f).

34. This case alleges deprivation of fundamental fairness, due process of law, equal protection of law, and utter disregard of duty to discern the will of the law. The applicable standards were established long ago in the Fourteenth Amendment and in federal case law. *See Osborn v. Bank of the United States*, et al., 9 Weat (22 U.S.) 738, 866, 6 L. Ed. 204 (1824). In the Osborn decision, Chief Justice Marshall wrote:

> "Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will

> of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words the will of the law."

35. This makes judicial discretion limited by duty to follow the will of the law. Laws allegedly were willfully broken by the Kentucky judiciary, for example, a contract was defeated by them, contrary to law. Allegedly, this led to the initiating cause of the destruction of Keyline. Authority was overreached; duty to discern the law was willfully ignored. This was shown by exhibits. Court was closed, on the damages, to willfully cover up the laws broken and prevent appeal. And so—federal court became the only possible means of redress. The state courts had years of opportunity to correct these wrongs and willed not to remedy them.

36. The Civil Rights Act of 1871 was passed for the express purpose of enforcing provisions of the Fourteenth Amendment. *See Lugar v. Edmondson Oil Co., Inc.*, U.S. Va. 1982, 102 S. Ct. 2744, 457 U.S. 922, 73 L. Ed. 2d 482.

37. The issues in this case are questions of federal, not state law. *See Marshall v. Sawyer*, C.A. 9(Nev.) 1962, 301 F.2d 639; *Gorenc v. Salt River Project Agr. Imp. and Power Dist.*, C. A.9 (Ariz.) 1989, 869 F. 2d 503, cert. denied 110 S. Ct. 256, 493 U.S. 899, 107 L. Ed. 2d 205.

CONCLUSION

38. In summary, the allegations are of damage to Keyline from rights deprived under color of state law. The rights deprived are vested by The Constitution, by federal statutes and by case law.

39. Upon de novo review, there was no mention of Keyline or the inaccessibility to state court alleged as cause of the destruction thereof, or of any writing incorporated into the complaint as exhibits. *THE ORDER* merely accepts the reasoning of the court below, without reporting specific findings as to the issues raised on appeal.

40. To date, no court has acknowledged the allegation that Keyline was destroyed, or that it happened as a result of Kentucky court action and inaction. It is this failure that has caused the damage to be unliquidated and expand from lack of timely determination.

41. Relief is available in, and only in, federal court. The claims are meritorious, but only if this Court will acknowledge the alleged damage to Keyline. Everything follows from that. Questions then arise like how did it happen and did the Kentucky court system act timely to prevent it. Appellant is entitled to have these questions of fact determined by a jury, in civil trial, in federal court.

42. *THE ORDER* does not make a substantial showing of fact or law and is a strict interpretation of the pleadings of a pro se claimant. There has been no clear irrefutable reason demonstrated in the dismissal of this action. Without something more than presented in *THE ORDER*, it fails the liberal interpretation standard required by law. Dismissal—before issuance of summons—without even one opportunity to amend *THE COMPLAINT* would be unjust.

43. Appellant's injury was from judge(s) refusing to act until after injury was severe; after which, action was taken to cause further injury and cover up prior injury.

44. Immunity does not lie for acts outside of judicial role. Judges have no authority to shoot a party with a gun or to will injury. There is little distinction between physical and severe financial injury from willful action or inaction. Malicious judicial will can be a weapon mightier than a gun. It severely injured Appellant. The injury was more severe than some bullet wounds. Justice can not be had without this case going forward and immunity does not bar relief in this case.

45. Denying this petition for rehearing would be a miscarriage of justice. The Appellant can not redress his damages, unless *THE ORDER* entered in this case on June 23, 1998 is vacated. *THE ORDER* would prevent proper federal

redress on a just cause, without a fair fact finding trial or hearing.

WHEREFORE, Appellant requests this Honorable Court to grant this petition and to vacate *THE ORDER* entered on June 23, 1998, and/or to grant other relief deemed appropriate, including a published opinion on the allegations and issues of substantial public interest.

This petition is respectfully submitted to the U. S. Court of Appeals, Sixth Circuit, this the 2nd day of July, 1998, By:

s/ FRANK B. CARABELLO
FRANK B. CARABELLO, PRO SE
2855 WILSON SCHOOL COURT
SINKING SPRING, PA 19608
(610) 670-5662

CERTIFICATION OF SERVICE

The undersigned hereby certifies that no other parties or counsel were involved in the district court case and, thus, there are no opposing counsel or parties to serve with copies of this petition.

s/ FRANK B. CARABELLO

VERIFICATION

I, Frank B. Carabello, hereby verify, swear or declare under penalty of perjury, that the facts stated in the foregoing are true and correct as I verily believe.

s/ FRANK B. CARABELLO

Note: The order reprinted in Appendix A-1 was attached to the original copy of this petition for rehearing, as submitted to the Court of Appeals.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 93-CI-00561

IN RE: THE MARRIAGE OF:

FRANK B. CARABELLO **PETITIONER**

and

SHARON R. CARABELLO **RESPONDENT**

AMENDED PETITION FOR DISSOLUTION

Comes the Petitioner, by and through counsel, and submits for his Amended Petition for Dissolution, the following:

1. Petitioner restates, reiterates and incorporates by reference paragraphs 1-10 of his original Petition for Dissolution as if set out in full herein, except that Paragraph 6 is hereby corrected in that this is the third marriage of the Petitioner and the second marriage of the Respondent.

2. Prior to the parties' marriage, Petitioner founded, owned and operated a business which provided laboratory research services for his customers and one of these (hereinafter referred to as "The Client") had executed a confidentiality agreement with him in July of 1983.

3. Over ninety-six percent of Petitioner's business was devoted to research conducted on behalf of "The Client, which can be documented with confidential evidence which must be sanitized prior to filing it with the Court.

4. The valid contract between Petitioner's business and "The Client" required that all operations concerning the research, including the name of the client, be kept in strictest confidence.

5. Following the parties' divorce, but prior to a determination of property disposition, the Respondent, who knew, or should have known, of the Petitioner's contract and relationship with "The Client" and of the contractual requirement of strict confidentiality, intentionally, deliberately, and improperly entered the Petitioner's business with a video camcorder and began videotaping the research being conducted for "The Client", intending to induce a breach of contract or termination of the relationship with "The Client" or acting with reckless or negligent disregard to the effect of her improper actions.

6. Upon discovering that his wife had videotaped the research being conducted for "The Client", Petitioner, contractually obligated to do so, reported the incident to "The Client", who in turn dismissed Petitioner and Petitioner's lab from the project, causing Petitioner to lose the entire account and, thus, ninety-six percent of his business.

7. The value of the business at the date of its destruction by Respondent was $250,000.00, as stipulated by Respondent in her Pre-trial Memorandum. However, as a result of Respondent's intentional and improper acts Petitioner's non-marital business is now worth only the costs of liquidation of assets minus closure expenses. Furthermore, Respondent's intentional, malicious, reckless, and/or negligent acts have irreparably harmed Petitioner's business reputation, and have therefore resulted in an interference with Petitioner's future business relationships and expectancies.

WHEREFORE., Petitioner respectfully requests the following relief:

1. All relief previously requested in paragraph 10 of the original Petition for Dissolution, incorporated by reference as if set out in full herein;

2. Compensatory and punitive damages assessed against the Respondent to be used to offset any award of marital property she may receive; and

3. Any and all other relief to which Petitioner may be deemed entitled.

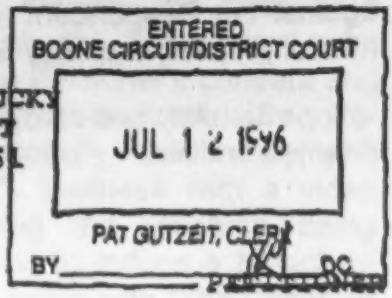
Respectfully Submitted,

S/ THOMAS R. WILLENBORG
Counsel for Petitioner
130 Park Place
Covington, Kentucky 41011
(606) 581-5177

CERTIFICATION

I hereby certify that I have sent a copy of the foregoing Amended Petition to the Hon. Rebecca Kaye, at 2525 Kroger Building, 1014 Vine Street, Cincinnati, OH 45202-1144, on this ____ day of October, 1994.

S/ THOMAS R. WILLENBORG



COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 93-CI-00561

IN RE: THE MARRIAGE OF

FRANK B. CARABELLO
PETITIONER

v.

SHARON CARABELLO
RESPONDENT

ORDER

** *** **

This matter having come before the Court and the Court hearing the pleadings, and having heard argument from the parties on motions and objections related to the Report of the Special Commissioner recommended August 24, 1995, the Court order as follows:

1. The finding overruling the Petitioner's Motion to Designate Action as a Jury Action and Suspend Execution of All Judgments Pending Verdict of Jury on Damages contained in Paragraph 3 of the Order entered February 16, 1996, is stricken and said matter is remanded to the Docket for further proceedings.

2. The equity in the Mitsubishi automobile listed as an asset at $10,000.00 in the Joint Pre-Trial Statement represents a duplication of assets as the same amount was included in the designated marital savings and checking accounts. To adjust for this duplication, $10,000.00 shall be deducted from the award to the Respondent Sharon Carabello.

Note: Caption, date and signatures, notice and certificate were captured in document by computer scan of official document. Text was typeset verbatim from official document to fit formatting requirements.

3. All other objections to the Recommended Order are hereby overruled and said recommendations are incorporated herein and approved and are the Order of this Court.

Joseph F. Bamberger, Judge

HAVE SEEN:

Michael K. Ruberg
Attorney for Petitioner
B:\DOCS\CARABELO.PET\ORDER.613

Rebecca K. Kaye
Attorney for Respondent

NOTICE

All parties will take notice that this order was entered in office of the Boone District/Circuit Clerk on the 12 day of July, 1996

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
D.C.

CERTIFICATE

I, PAT GUTZEIT, Clerk of the Boone District/Circuit Court, hereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record this 12 day of July, 1996

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
D C

Note: Attorney Ruberg authored and co-signed this order against client's will and withdrew as counsel on July 12, 1996.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
FILE NO. 93-CI-00561

ENTERED
7-23-96
PAT GUTZEIT, CLERK
BOONE CIRCUIT/DISTRICT COURTS
BY: D.C.

IN RE: THE MARRIAGE OF:

FRANK B. CARABELLO, PETITIONER

and

SHARON R. CARABELLO, RESPONDENT

****

ORDER

****

The Court, having ruled on Petitioner's Objections and entered an Order on July 12,1996, and upon hearing and the motion of the Respondent for release of funds, hereby orders the release of any and all accounts that were frozen, escrowed or accounts under a temporary restraining order from this Court (as specifically listed below) and\or subject to the continuing jurisdiction of this Court by Order entered on , (attached hereto) be released to Respondent Sharon Carabello on presentation of a certified copy of this Order to the respective institution.

The accounts that are covered by this Order shall included the escrow at Hebron Bank containing the proceeds from the sale of the real property, Liberty Nation Bank (90000449), Star Bank, Florence Deposit Bank, Central Trust of Norther Kentucky, Kentucky Federal Savings and Loan, Dean Whitter Reynolds, Inc., American State Bank of Indiana, 5/3rd Bank of Northern Kentucky and 5/3rd Bank of Lawrenceberg, Indiana.

J. F. Bamberger
HON. JUDGE BAMBERGER

Note: Caption, date and signature captured in document by computer scan of official document. Text was typeset verbatim from official document to fit formatting requirements.

Commonwealth Of Kentucky

Court Of Appeals

NO. 96-CA-2299-MR

FRANK B. CARABELLO — APPELLANT

V. APPEAL FROM BOONE CIRCUIT COURT
ACTION NO. 93-CI-0561

SHARON R. CARABELLO; REBECCA K. KAYE — APPELLEES

* * * *

ORDER

BEFORE: EMBERTON, MILLER AND SCHRODER, JUDGES.

The Court has considered appellant's motion for interlocutory relief pursuant to CR 65.08 to which appellees did not respond and, being otherwise sufficiently advised, ORDERS the motion be DENIED. Appellant seeks an order from this Court reversing the release of funds which had been frozen under a Temporary Restraining order and restoring said funds or, in the alternative, requiring appellee, Sharon Carabello, to post a $50,000.00 bond with surety. Appellant contends the release of the funds will cause him irreparable harm because it depletes resources necessary to recover damages in yet unresolved claims. However, it appears to the Court that the funds in question are currently protected by a bankruptcy stay and therefore, without expressing any opinion as to the merits of the claims raised in this appeal, we hold that interlocutory relief is not appropriate.

Further, upon initial screening of the record of this

Note: Part of caption, date and signature were captured in document by computer scan of official document. Text was typeset verbatim from official document to fit formatting requirements.

appeal, it appears that the notice of appeal designates orders which are interlocutory. The appeal is taken from an order entered by the Boone Circuit Court on July 12, 1996, which reserves the disposition of appellant's motion to designate the action as a jury action and to suspend execution of all judgments pending a jury verdict on damages. The order does not adjudicate all claims in the action but does not include the requisite finality recitals under CR 54.02. The appeal is also taken from an order entered by the Boone Circuit Court on July 23, 1996, releasing the aforementioned funds. Likewise, the order does not include CR 54.02 language.

Appellant is hereby given twenty (20) days from the date of entry of this order in which to SHOW CAUSE, if any there be, why appeal number 96-CA-2299-MR should not be dismissed as having been taken from nonfinal, non-appealable orders. Appellant shall file one (1) original and four (4) copies of his response.

ENTERED: DEC 12 1996

Wil Schroder

JUDGE, COURT OF APPEALS

Commonwealth Of Kentucky
Court Of Appeals

96-CA-2299-MR

FRANK B. CARABELLO APPELLANT

V. APPEAL FROM BOONE CIRCUIT COURT
ACTION NO. 93-CI-561

SHARON R. CARABELLO, ET AL. APPELLEES

* * * * * * * * * * *

ORDER DISMISSING APPEAL

BEFORE: BUCKINGHAM, COMBS and KNOPF, Judges.

By order entered December 12, 1996, this Court required appellant to show cause why this appeal should not be dismissed as having been taken from nonfinal, nonappealable orders. Having considered appellant's response thereto, the Court has determined that appellant has not shown cause.

This appeal is taken from an order entered by the Boone Circuit Court on July 12, 1996, which reserves the disposition of appellant's motion to designate as a jury action additional claims raised in his amended petition and to suspend execution of all judgments pending a jury verdict on damages. The appeal is also taken from an order entered by

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Note: Caption, date and signature captured in document by computer scan of official document. Text was typeset verbatim from official document to fit formatting requirements.

the Boone Circuit Court on July 23, 1996, releasing funds which had been frozen under a Temporary Restraining Order. Neither order includes the requisite finality recitals under CR 54.02. The appeal is also taken from an order entered by the Boone Circuit Court on July 23, 1996, which denies appellant's motion for a new trial under CR 59.01. Said order is not appealable in and of itself since appellant did not seek review under CR 60.02. The order could have been appealable only if it had denied a motion to set aside a prior final judgment. However, the Court has already concluded that the order of July 12, 1996, is not a final decision.

Therefore, it is ORDERED, on the Court's own motion, that this appeal be DISMISSED as having been taken from interlocutory orders.

ENTERED: FEB 11 1997 Sara Combs
JUDGE, COURT OF APPEALS

Supreme Court of Kentucky

97-SC-150-D
(96-CA-2299-MR)

FRANK B. CARABELLO — MOVANT

V.

BOONE CIRCUIT COURT
93-CI-561

SHARON R. CARBELLO, ET AL. — RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED August 27, 1997.

Robert F. Stephens
Chief Justice

Note: Caption, date and signature captured in document by computer scan of official document. Text was typeset verbatim from official document to fit formatting requirements.